

**AMENDMENT TO H.R. 2647, AS REPORTED  
OFFERED BY MR. CONAWAY OF TEXAS**

At the end of title X, insert the following new sections:

1 **SEC. 1055. DETAINEE PHOTOGRAPHIC RECORDS PROTEC-**  
2 **TION.**

3 (a) **SHORT TITLE.**—This section may be cited as the  
4 “Detainee Photographic Records Protection Act of 2009”.

5 (b) **DEFINITIONS.**—In this section:

6 (1) **COVERED RECORD.**—The term “covered  
7 record” means any record—

8 (A) that is a photograph that—

9 (i) was taken during the period begin-  
10 ning on September 11, 2001, through Jan-  
11 uary 22, 2009; and

12 (ii) relates to the treatment of individ-  
13 uals engaged, captured, or detained after  
14 September 11, 2001, by the Armed Forces  
15 of the United States in operations outside  
16 of the United States; and

17 (B) for which a certification by the Sec-  
18 retary of Defense under subsection (c) is in ef-  
19 fect.

1           (2) PHOTOGRAPH.—The term “photograph” en-  
2           compasses all photographic images, whether origi-  
3           nals or copies, including still photographs, negatives,  
4           digital images, films, video tapes, and motion pic-  
5           tures.

6           (c) CERTIFICATION.—

7           (1) IN GENERAL.—For any photograph de-  
8           scribed under subsection (b)(1)(A), the Secretary of  
9           Defense shall certify, if the Secretary of Defense, in  
10          consultation with the Chairman of the Joint Chiefs  
11          of Staff, determines that the disclosure of that pho-  
12          tograph would endanger—

13                   (A) citizens of the United States; or

14                   (B) members of the Armed Forces or em-  
15           ployees of the United States Government de-  
16           ployed outside the United States.

17          (2) CERTIFICATION EXPIRATION.—A certifi-  
18          cation submitted under paragraph (1) and a renewal  
19          of a certification submitted under paragraph (3)  
20          shall expire 3 years after the date on which the cer-  
21          tification or renewal, as the case may be, is sub-  
22          mitted to the President.

23          (3) CERTIFICATION RENEWAL.—The Secretary  
24          of Defense may submit to the President—

1 (A) a renewal of a certification in accord-  
2 ance with paragraph (1) at any time; and

3 (B) more than 1 renewal of a certification.

4 (4) NOTICE TO CONGRESS.—A timely notice of  
5 the Secretary’s certification shall be submitted to  
6 Congress.

7 (d) NONDISCLOSURE OF DETAINEE RECORDS.—A  
8 covered record shall not be subject to—

9 (1) disclosure under section 552 of title 5,  
10 United States Code (commonly referred to as the  
11 Freedom of Information Act); or

12 (2) disclosure under any proceeding under that  
13 section.

14 (e) RULE OF CONSTRUCTION.—Nothing in this sec-  
15 tion shall be construed to preclude the voluntary disclosure  
16 of a covered record.

17 (f) EFFECTIVE DATE.—This section shall take effect  
18 on the date of enactment of this Act and apply to any  
19 photograph created before, on, or after that date that is  
20 a covered record.

21 **SEC. 1056. OPEN FREEDOM OF INFORMATION ACT.**

22 (a) SHORT TITLE.—This section may be cited as the  
23 “OPEN FOIA Act of 2009”.

24 (b) SPECIFIC CITATIONS IN STATUTORY EXEMP-  
25 TIONS.—Section 552(b) of title 5, United States Code, is

1 amended by striking paragraph (3) and inserting the fol-  
2 lowing:

3           “(3) specifically exempted from disclosure by  
4 statute (other than section 552b of this title), if that  
5 statute—

6           “(A)(i) requires that the matters be with-  
7 held from the public in such a manner as to  
8 leave no discretion on the issue; or

9           “(ii) establishes particular criteria for  
10 withholding or refers to particular types of mat-  
11 ters to be withheld; and

12           “(B) if enacted after the date of enactment  
13 of the OPEN FOIA Act of 2009, specifically  
14 cites to this paragraph.”.

